

REMARKS

Entry of the foregoing and reconsideration of the application identified in caption, as amended, pursuant to and consistent with 37 C.F.R. §1.116 and in light of the remarks which follow, are respectfully requested.

By the above amendments, claims 2, 3, 7, 11, 12 and 18 have been canceled without prejudice or disclaimer. Claim 1 has been amended to incorporate the subject matter of claims 2 and 3. Claim 6 has been amended to incorporate the subject matter of claim 7. Claim 10 has been amended to incorporate the subject matter of claim 11 and 12. In addition, claim 15 has been amended to incorporate the subject matter of claim 18. Entry of the above amendments is proper at least because they place the application in condition for allowance or in better form for appeal. See M.P.E.P. §714.12.

In the Official Action, claims 1, 2 and 6 stand rejected under 35 U.S.C. §103(a) as being obvious over U.S. Patent Application Publication No. 2003/0214625 (*Arakawa et al*) in view of Japanese Patent Document No. 2001-091741 (*JP '741*), and further in view of U.S. Patent No. 6,825,902 (*Kaneko*). As discussed above, independent claim 1 has been amended by incorporating the subject matter of claim 3 therein. In addition, independent claim 6 has been amended by incorporating the subject matter of claim 7 therein. Claims 3 and 7 have not been included in the above rejection. Accordingly, for at least this reason, withdrawal of the rejection is respectfully requested.

Claims 10, 11 and 15-17 stand rejected under 35 U.S.C. §103(a) as being obvious over *Kaneko* in view of *JP '741*, and further in view of *Arakawa et al*. As discussed above, independent claims 10 and 15 have been amended by incorporating the subject matter of claims 12 and 18 therein, respectively. Claims 12 and 18 have not been included in the above

rejection. Accordingly, for at least this reason, withdrawal of the rejection is respectfully requested.

Claims 3, 7, 12 and 18 stand rejected under 35 U.S.C. §103(a) as being obvious over *Arakawa et al* in view of *JP '741* and *Kaneko*, and further in view of U.S. Patent No. 6,338,902 (*Hsu et al*). As discussed above, independent claims 1, 6, 10 and 15 have been amended by incorporating the subject matter of claims 3, 7, 12 and 18 therein, respectively. Applicants submit that the independent claims are allowable over the above applied art for at least the following reasons.

Independent claims 1 and 6 are directed to a retarder and a process for preparing a retarder, respectively. Independent claims 10 and 15 are directed to a circular polarizer and a process for preparing a circular polarizer, respectively.

Arakawa et al does not disclose or suggest each feature recited in independent claims 1, 6, 10 and 15. For example, *Arakawa et al* does not disclose or suggest that a rubbing axis of an alignment layer for predetermining an orientation angle of the rod-like molecules in the first optically anisotropic layer and the longitudinal direction of the substrate cross substantially at +30 degrees, and a rubbing axis of an alignment layer for predetermining an orientation angle of the rod-like molecules in the second optically anisotropic layer and the longitudinal direction of the substrate cross substantially at -30 degrees, as recited in claims 1 and 10.

In addition, *Arakawa et al* fails to disclose or suggest (i) a step of preparing a layer on or above a surface of a substrate having a longitudinal direction and rubbing a surface of the layer in a direction at +30 degrees relative to the longitudinal direction of the substrate, to prepare a first alignment layer capable of aligning rod-like liquid-crystalline molecules in a direction parallel to a rubbing axis, and (iii-1) a step of preparing a layer on or above the

surface of the substrate and rubbing a surface of the layer in a direction at -30 degrees relative to the longitudinal direction of the substrate, which corresponds to a direction crossing the rubbing axis of the first alignment layer at 60 degrees, to prepare a second alignment layer capable of aligning rod-like liquid-crystalline molecules in a direction parallel to a rubbing axis, or (iii-2) a step of preparing a layer on or above a rear surface of the substrate and rubbing a surface of the layer in a direction at +30 degrees relative to the longitudinal direction of the substrate, which corresponds to a direction crossing the rubbing axis of the first alignment layer at 60 degrees, to prepare a second alignment layer capable of aligning rod-like liquid-crystalline molecules in a direction parallel to a rubbing axis, as recited in claims 6 and 15.

In this regard, the Examiner has relied on *Kaneko* for disclosing in-plane slow axes of first and second optically anisotropic layers having specific angles with respect to a longitudinal direction of a substrate (Official Action at page 4). At pages 3 and 4 of the Official Action, it appears that the Patent Office has taken the position that the in-plane slow axes disclosed by *Kaneko* inherently correspond to the rubbing axes and rubbing directions recited in claims 1, 6, 10 and 15. Applicants respectfully but strenuously disagree with such assertion.

The Patent Office's burden of proof of showing an alleged inherency is well established. "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'" *In re Robertson*, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (emphasis added). "In relying upon the theory of inherency, the

examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent feature necessarily flows from the teachings of the applied prior art." *Ex Parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).

In the present case, the Patent Office has not shown with the requisite certainty that the in-plane slow axes disclosed by *Kaneko* correspond to the rubbing axes recited in claims 1 and 10 and the rubbing directions recited in claims 6 and 15. No factual explanation or technical reasoning has been provided by the Patent Office which establishes with certainty that the in-plane slow axes correspond to the recited rubbing axes and rubbing directions. Simply put, *Kaneko*'s disclosure of the in-plane slow axes does not constitute a disclosure or suggestion of the rubbing axes recited in claims 1 and 10, nor the rubbing directions recited in claims 6 and 15.

JP '741 and *Hsu et al* fail to cure the above-described deficiencies of *Arakawa et al*. In this regard, the Patent Office has relied on *JP '741* for allegedly disclosing "a first optically anisotropic layer (A) having substantially Π phase difference at 550 nm wavelength and a second optical anisotropic layer (B) having substantially $\Pi/2$ phase difference at 550 nm wavelength" (Official Action at page 3). In addition, the Patent Office has relied on *Hsu et al* for allegedly disclosing a compensator formed of a composition comprising a liquid-crystalline compound of the Formula (I) (Official Action at page 7). However, like *Arakawa et al*, the above applied art fails to disclose or suggest the rubbing axes as recited in claims 1 and 10, as well as the rubbing directions recited in claims 6 and 15.

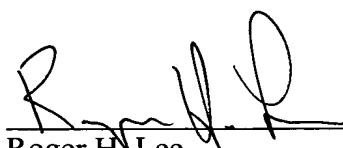
Accordingly, for at least the above reasons, withdrawal of the §103(a) rejection is respectfully requested.

From the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order, and such action is earnestly solicited. If there are any questions concerning this paper or the application in general, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

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Date: May 12, 2006

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